

Richard A. Ramler  
Ramler Law Office, P.C.  
202 West Madison  
Belgrade, MT 59714  
Telephone (406) 388-0150  
Telefax (406) 388-6842  
[RichardRamler@aol.com](mailto:RichardRamler@aol.com)

Jon D. Robinson  
Bolen, Robinson & Ellis, LLP  
202 South Franklin Street, 2<sup>nd</sup> Floor  
Decatur, IL 62523  
Telephone (217) 429-4296  
Telefax (217) 329-0034  
[jrobinson@brelaw.com](mailto:jrobinson@brelaw.com)

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BUTTE DIVISION

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RICHARD BARBER and BARBARA  
BARBER,

Plaintiffs,

vs.

REMINGTON ARMS COMPANY, INC.,  
SPORTING GOODS PROPERTIES, INC.,  
And E.I. DuPONT DE NEMOURS AND  
COMPANY,

Defendants.

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) Cause No. 2:12-cv-00043-BU-DLC  
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)  
) **PLAINTIFFS' REPLY IN**  
) **SUPPORT OF PLAINTIFFS'**  
) **MOTION TO**  
) **ALTER OR AMEND**  
) **JUDGMENT**  
)  
)  
)

Plaintiffs, Richard Barber and Barbara Barber (Barbers), submit their reply in support of Plaintiffs' Motion to Alter or Amend Judgment. (Doc. 38).

**I. Public Policy was Not Raised by Defendants in Defendants Motion to Dismiss.**

Defendants argue that Plaintiffs should be barred from presenting public policy which opposes dismissal of the complaint, but Defendants did not raise the issue of public policy encouraging settlement in either of their briefs in support of their motions to dismiss Plaintiffs' original or first amended complaint (Docs. 9 and 24). Plaintiffs did respond to Defendants' arguments presented, but had no reason to address public policy in their Responses to Defendants' motions to dismiss.

The Court has cited, *Miller v. St. Farm Mut. Auto. Ins. Co.*, 5 P.3d 1278, 1281 (Mont. 2007), and *Hohensee v. Chemodurow*, 470 P.2d 965, 967 (Mont. 1970), in its Order regarding public policy which encourages settlement. (Doc. 37 at 12 – 13). Neither case was cited or discussed in briefs by either party in support of or in opposition to Defendants' motions to dismiss.

The Court also cited, *Rich v. Ellingson*, 174 P.3d 491 (Mont. 2007), *Arnold v. United States*, 816 R.2d 1306 (9<sup>th</sup> Cir. 1987), and *Skilstaf, Inc. v. CVS Caremark Corp.*, 669 F.3d 1005 (9<sup>th</sup> Cir. 2012). None of these cases were mentioned in briefs filed by the parties.

Plaintiffs should not be precluded from addressing the issue of public policy in a motion to reconsider, under the circumstances here.

## **II. Pre-tort Releases are illegal and invalid in Montana.**

Defendants do not dispute that a pre-tort release is illegal and invalid in Montana. Defendants likewise do not dispute that each communication of a defamatory statement to a third party constitutes a new publication, which gives rise to a new cause of action or a new tort in Montana. Defendants do not cite any case that extends the terms of a release to include the release of a new tort. None of the cases cited by the Court in its Order involved the release of “future” claims that did not “exist” before the release was signed.

The Barbers have alleged that Defendants made a number of defamatory statements about them, beginning in 2010. Richard Barber admittedly was not an expert on Remington’s internal documents and the defects in the Walker fire control in 2002 when the release of claims was signed. However, he was an expert in 2010. The Barbers have alleged that Defendants’ defamatory statements were, and are, intended to damage his credibility and reputation. These are new torts and the circumstances have changed. Moreover, in Montana, any purported pre-tort release of these defamatory statements is illegal and unenforceable. Defendants’ only response is that Plaintiffs’ should be barred from this public policy without citing any justification.

## CONCLUSION

**For the reasons stated above,** Plaintiffs respectfully request the Court to alter its Order of February 11, 2013, (Doc. 37) by denying Defendant's motion to dismiss the First Amended Complaint.

Dated this 13th day of March, 2013.

Ramler Law Office, P.C.

By: /s/ Richard A. Ramler  
Richard A. Ramler

Bolen Robinson & Ellis, LLP

By: /s/ Jon D. Robinson  
Jon D. Robinson

Attorneys for Plaintiffs

**CERTIFICATE OF COMPLIANCE**

I hereby certify that the forgoing brief is double-spaced, in 14 point Times New Roman typeface, and the word count, calculated by Microsoft Office Word 2010, is 495 words, excluding the Caption, Table of Contents, Certificate of Service, Certificate of Compliance, and Table of Authorities.

By: /s/ Richard A. Ramler  
Richard A. Ramler

Attorney for Plaintiffs

### **CERTIFICATE OF SERVICE**

I hereby certify that on the 13th day of March, 2013, a copy of the foregoing document was served on the following persons by and through the Electronic Case Filing System.

Clerk, U.S. District Court

Robert M. Carlson  
Corette Pohlman & Kebe  
129 West Park  
P.O. Box 509  
Butte, Montana 59703

Ramler Law Office, P.C.

By: /s/ Richard A. Ramler  
Richard A. Ramler

Attorney for Plaintiffs